



May 3, 2006

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**RE: CG Docket No. 02-278**

Dear Chairman Martin:

My name is Greg Hogenmiller and I serve as Corporate Counsel for Omnium Worldwide, Inc. ("Omnium") with headquarters in Omaha, Nebraska. Omnium is primarily engaged in various aspects of consumer debt collection. Omnium does not perform any telemarketing services. The purpose of this correspondence is twofold. First, I wish to make you aware my business has been substantially harmed as a result of the Federal Communications Commission's (FCC) 2003 regulatory decision to expand the definition of autodialer beyond its statutory definition. Second, I urge you as the chair of the FCC to ask the commission to grant ACA International's (ACA) request for regulatory clarification in favor of the industry as well as all consumers who lawfully pay for goods and services they have purchased.

As you know, the Telephone Consumer Protection Act (TCPA) was passed in 1991. This law was designed to protect consumers from invasive calls from telemarketers. One of the provisions of the TCPA prohibits the use of an autodialer to communicate with a consumer by way of their cell phone.<sup>1</sup> Between 1991 and 2003, the FCC consistently ruled that this autodialer prohibition did not apply to calls made using an autodialer *if the sole purpose of the calls was to recover payments for goods and services already purchased*.

But in July 2003, the FCC took a dramatic shift in its position about the applicability of the autodialer prohibition to the credit and collection industry when it expanded the statutory definition of autodialer to include predictive dialers. By

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<sup>1</sup> The TCPA defines an autodialer as, "equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."

expanding the definition of autodialer and failing to restate the commission's prior rulings that calls made by creditors and debt collectors to consumers' about their past due payment obligations by way of their cell phones were not subject to the autodialer prohibition, the FCC inadvertently brought calls my company makes for the sole purpose of recovering past due payment obligations from consumers within the scope of the regulation. This shift in policy has caused my business substantial harm. I estimate the inability to effectively use predictive dialers would literally double the labor costs associated with running my business. It also stands to reason that as the cost of providing collection services goes up the credit industry will simply pass those costs on to paying consumers. The total cost could be as high as \$15 billion dollars. This is an astronomical increase in operating costs that is not correlated with any legitimate business or regulatory need.

I am aware ACA has filed a Petition for an Expedited Ruling regarding this issue in proceeding CG Docket No. 02-278 with the commission. I fully support ACA's petition and the relief requested, including ACA's statement of the harm to business and the federal and state governments as a result of the FCC's rule. I believe that the FCC should not uphold an unsupportable and damaging regulatory interpretation that will significantly hinder the ability of creditors and collection agencies in recovering owed funds, and will ultimately lead to higher prices and diminished services to consumers. To do so is contrary to the intent of Congress and all prior rulings of the FCC between 1991 and 2003 concerning this issue.

In the specific context of recovering payments, Omnium uses predictive dialers to complete transactions for which consumers have obtained a benefit, without payment. They are not used – nor do they have the capacity to be used – to randomly solicit customers to make purchases or advertise goods. Most importantly, federal laws such as the Fair Debt Collection Practices Act already regulate a debt collectors use of consumer information and the manner in which consumers are contacted. The FDCPA provides a specific procedure for consumers to prevent calls at times or places that are inconvenient (such as at a place of employment or on a cell phone). Many states have similar, or even more restrictive, statutes governing this type of activity. Additional federal regulation in this area simply is not needed and fails to recognize the trends in consumer use of wireless phones as a standard, day-to-day means of communication.

If the FCC's 2003 regulatory definition of autodialer is allowed to stand, creditors and their debt collection agents face the devastating loss of an essential technological tool, namely the autodialer. It cannot be overstated that autodialer technology is directly or indirectly responsible for returning tens of billions of dollars each year to the U.S. economy. Banning their use in this limited context would not only be inconsistent with Congress' intent, but it would be an

unconscionable interference with creditors' ability to request payment from its own customers. Additionally, one of the largest creditors in the United States is the federal government. If the FCC does not clarify that the autodialer prohibition does not apply to those making calls to collect past due payment obligations, the federal government will be forced to discontinue its use of autodialers to recover past due payment obligations from tax payers. Such a result would be devastating to the federal government, including the FCC, Department of the Treasury, Department of Education and the Internal Revenue Service and cause all citizens who lawfully pay their federal taxes and other payments owed to the federal government to suffer substantial harm.

The TCPA was enacted to protect consumers from unsolicited advertisements and telemarketing calls. The TCPA's prohibition against the use of autodialers to contact consumers by way of their cell phones was specifically intended to protect consumers from incurring charges as a result of unwarranted telemarketing calls being made to their wireless phones about products or services *to be purchased in the future*. There was never any intention on the part of Congress to prohibit creditors and their retained collection agencies from being able to contact consumers on their wireless phones about *a past due payment obligation for goods and services already purchased and received*.

Moreover, wireless phone usage has grown exponentially since 1991 when the TCPA was enacted. Today, more than one out of every five Americans under the age of 35 does not have a landline phone and instead uses a wireless phone as their exclusive means of telephonic communication. The notion that a calling a consumer on a wireless phone with a predictive dialer is somehow more invasive than a manually dialed call to the same wireless phone is nonsensical.

As it stands today, my business, along with thousands of others, face serious financial hardship due to the FCC's regulatory reversal. The FCC's rule needlessly subjects us to federal enforcement and private litigation, even though Congress never intended such an outcome. Furthermore, the lack of efficiency and cost savings realized through the use of modern technology such as predictive dialers is passed through to consumers through increased prices or diminished services. In the end, this interpretation hurts the very consumers that the FCC is trying to protect.

For these reasons, the FCC should promptly clarify that autodialer calls to wireless numbers solely to recover payment obligations are not covered by the TCPA regulations for the reasons expressed by ACA.

Sincerely,

Kevin J. Martin  
May 3, 2006  
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A handwritten signature in dark ink, appearing to read "Greg Hogenmiller". The signature is fluid and cursive, with the first name "Greg" and last name "Hogenmiller" clearly distinguishable.

Greg Hogenmiller  
Corporate Counsel

cc: ACA International

Sincerely,

[Omnium rep]  
[title]

